Charles Matoesian
Illinois EPA

Via email

Re: 10-day comment period on the Midwest Generation Waukegan Operating Permit

Dear Mr. Matoesian;

Your Agency has provided me with the opportunity to comment on the new draft proposed permit for the Midwest Generation Waukegan Generating Station., CAAPP permit # 95090047

Your Agency's decision to issue a draft proposed permit seems to contradict the USEPA remand order from September 22, 2005. The order clearly states that *"IEPA must reopen the Waukegan permit and make available to the public an adequate statement of basis that provides the public and U.S. EPA an opportunity to comment on the title V permit and its terms and conditions as to the issues identified above."*(Page 9)
IEPA has not done that.
Also: page 7 *"When IEPA re-notices this permit, the notice must clearly state that the permitting action includes action on title I terms if it has established, modified, streamlined or deleted any title I terms in the permit action, and the statement of basis must discuss the bases for any changes to title I permit terms."* It says when, not if.

Page 9: *"By reopening the permit and renoticing it with a statement of basis that describes its permitting decisions, the permitting authority is ensuring compliance with the fundamental title V procedural requirements of adequate public notice and comment required by sections 502(b)(6) and 503(e) of the Act and 40 C.F.R. § 70.7(h), as well as ensuring that the rationale for terms such as the selected monitoring method, or lack of monitoring, is clearly explained and documented in the permit record."*

IEPA has not reopened the permit, nor did it issue a new statement of basis. It seems to rely on its Response to comments document and the new permit, but IEPA again does not adequately explain its permitting decision. The remand order admonished IEPA for not properly informing the public about permit decisions. It seems that IEPA continues with that pattern.

The 10 day comment period that is afforded only to participants in the prior permit proceedings can in no way be construed to fulfill the requirement that the public have an opportunity to comment on a new permit.
In addition, even if I were to try and comment on just the changes in the new permit, my requests to supply me with a redline/strikeout version of the new permit was denied with the curious remark that the only change in the permit was the date of the first required stacktest (phone conversations with Mr. Frost and Mr. Reed). Even a cursory glance at

the new permit makes it very clear that that is not the case. Even the Response to Comments reads (Page 5*): Specifically, the permit clarifies and enhances the requirements applicable to this plant, including the recordkeeping, reporting, and testing requirements of the permit. Typographical errors, omissions and other inadvertent mistakes have also been addressed in the permit.*
These are exactly the items I would have liked to have comment on had they been specifically listed in the response to comments, or identified in a redline/strike-out version of the permit.

Moreover, IEPA's comment on the statement of basis requirements still show that the Agency does not understand the importance and purpose of a statement of basis. Instead, it believes on page 12 of the RS :'*Federal regulations and other guidance do not prescribe detailed requirements for a permit statement of basis*." IEPA is fully aware of EPA's Region 5 guidance letter to Ohio that in great detail spells out what EPA believes the requirements for a sufficient statement of basis are.
IEPA's Response to comments on page 12 reads:" *Even assuming for the sake of argument that the statement of basis for this permit was procedurally flawed, it cannot be said that the permit does not comply with the requirements of the CAAPP or the Clean Air act*", COMPLETELY ignoring the finding in the Remand Order*:" In this case, as discussed below, the permitting authority's failure to adequately explain its ermitting decisions in the statement of basis or elsewhere in the permit record is such a serious flaw that the adequacy of the permit itself is in question."*

Moreover, instead of explaining its permit decisions and making those public for 30 day public review, IEPA still does not respond to all comments it received on the Waukegan permit. The Remand Order clearly states that:
On page 4*: It is a general principle of administrative law that an inherent component of any meaningful notice and opportunity for comment is a response by the regulatory authority to significant comments. Home Box Office v. FCC, 567 F.2d 9, 35 (D.C. Cir. 1977) ("the opportunity to comment is meaningless unless the agency responds to significant points raised by the public."). Accordingly, IEPA has an obligation to respond to significant public comments.*
In anticipation of EPA's view on the duty by permitting agencies to respond to comments, as evidenced in the Crawford and Fisk decision, this commenter already submitted comments on her expectation what issues that were raised IEPA has to respond to (see letter to Charles Mateosian, dated, July 30, 2005 which I hereby request be incorporated into this record
However, it is impossible to even begin to address all the omissions and arguments IEPA made in the RS within the 10 day time frame.

Wish to point out, however, that Midwest Generation continues to violate opacity limits at their facility. These are ongoing violations that have to be addressed in a compliance schedule. Emission reports revealed that MWG Waukegan exceeded opacity limits 83 times in the last 6 quarters. Those exceedances are in addition to "excused" exceedences.

Also, IEPA did not respond to our comments that according to its emission reports , Midwest Generation only undertook one maintenance, two correct malfunction and one repair activity although the emission reports show 175 malfunctions in 540 days. MWG Waukegan has excessive number of malfunctions and the low number of corrective actions although 40 CFR 60.2 clearly defines malfunctions as "a sudden, infrequent, and not reasonably preventable failure of equipment to operate in a normal manner. Failures caused by poor maintenance or careless operations are not malfunctions." Guidance has been issued that require that repairs must be made and that the event must not be part of a reoccurring pattern that is indicative of inadequate design operation or maintenance.

We will also mention that this permit does not contain legally adequate provisions to ensure compliance with all periodic monitoring requirements. The permit should, but does not, require stack testing if electrostatic precipitators (ESPs) fail to operate within established parameters. The permits should, but do not, require at least annual stack and parametric monitoring testing to ensure there is an ongoing correlation between parametric monitoring and actual emissions.

Two provisions of Part 70 require that Title V permits contain monitoring requirements. The "periodic monitoring rule," 40 CFR 70.69(a)(3)(i)(B), requires that "where the applicable requirements does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of record keeping designed to serve as monitoring), [each Title V permit must contain] periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit…Such monitoring requirements shall assure use of terms, test methods, averaging periods, and other statistical conventions consistent with the applicable requirement. Record keeping provisions may be sufficient to meet the requirements of [40 C.F.R 70.69a)(3)(i)(B)]." The "umbrella monitoring" rule, 40 C.F.R 70.6(c)(1), requires that each Title V permit contain, "consistent with [section 70.6(a)(3)], …monitoring…requirements sufficient to assure compliance with the terms and conditions of the permit." EPA has interpreted section 70.6(c)(1) as requiring that Title V permits contain monitoring required by applicable requirements under the Act (e.g. monitoring required under federal rules required under 40 C.F.R. 70.6(a)(3)(i)(B). 69 Fed. Reg. At 3202, 3204 (January 22, 2004); see also Appalachian Power Co. v. EPA, 208 F. 3d 1015 (D.C. Cir. 2000).

The permit relies on a combination of initial stack tests, continuous opacity monitors (COMs) and ESP monitors to determine compliance with PM emission limitations. Consequently, these testing and monitoring systems must operate according to a credible, legally adequate protocol to serve as meaningful indicators of PM emissions. Moreover, through testing, these indicators must be demonstrated in combination to correlate to PM emissions. The appropriate operating ranges, correlated with emissions, are particularly important to determine proper ESP operation. Because of this, permit must be altered in the following, specific ways:

There is need for a more targeted, rigorous stack testing protocol than in the new draft proposed permit. While the permit requires some stack testing for particulate matter, it appears that is does not require stack testing if ESP operations fall out of range. This is true even if ESP operations experience recurrent, chronic problems. Because ESP performance is being used to correlate to PM emissions, it is entirely appropriate to

establish a threshold for ESP "out-of-range" operations that will trigger PM stack testing. In the absence of such a trigger and subsequent stack testing, it will be difficult if not impossible to detect the nature and extent of PM exceedances, and to develop appropriately scaled corrective actions.

The permit should include a defined schedule for regular stack and parametric monitoring testing. Under the present permits, Illinois facilities are given discretion based "on prior performance" to schedule subsequent stack testing. There are no provisions related to ongoing testing of parametric monitors. Notably, following remand, the Dunkirk Power LLC permit was revised to include annual stack testing. The Petitioner in the present case contends that because PM emissions will be determined through the correlation of ESP performance, COM and stack testing, it is entirely appropriate to require targeted stack and parametric monitoring testing to demonstrate (and, if necessary, correct) this correlation on a regular basis, no less than annually. In the absence of ongoing, targeted testing, it will be difficult if not impossible to determine if the initial correlation between systems that established PM compliance remains valid over time.

The permit should be revised to require more frequent record keeping for ESP performance. Again, this is necessary because ESP performance, correlated with COM and stack testing, is being used as a surrogate for actual, ongoing PM monitoring and compliance. Under the new draft proposed permit, ESP performance is recorded on a once-per-shift or once-per-day basis. MWG is required to record ESP fields that are in service, the primary voltages and currents, the secondary voltages and currents as parametric measurements for the operating condition of the ESP. However, the permit does not include an adequate protocol to ensure that these once-per-shift snapshots of parametric measurements are representative of the full range of ESP operations during the shift. The Dunkirk permit, issued after remand, resolved this issue by requiring twice-per-shift record keeping. While still imperfect, this protocol is more likely to represent actual ESP operations over a range of conditions, to identify any out-of-range operations, and to enable a credible correlation with PM emissions. The twice-per-shift protocol should be required.

EPA is currently evaluating possible NSR program violations at the Midwest Generation plants. We wonder when/ whether IEPA conducted a sufficient investigation of NSR applicability. IEPA believes that " potential NSR issues posed at these plants are complex and investigation of these issues is not amenable to resolution during permitting." This is an erroneous and pathetic statement by which IEPA shirks its responsibilities as regulator and enforcer and ultimately fails to protect the health and welfare of the citizens of Illinois. The response to comments states that "*The Illinois EPA has also received comments regarding the need to conduct a searching assessment of the compliance status of this plant with the provisions pertaining to opacity, and possibly PM, and NSR. However, the CAAPP is not intended to drive compliance investigation nor enforcement activity."*

Contrary to IEPA's believes, a CAAPP permit applications has to include information "sufficient to evaluate the subject source and its application and to determine all applicable requirements." If an application lacks pertinent information , IEPA must find it incomplete, indeed it has the right and the obligation under the law to require the

applicants to provide "all information, …, sufficient to evaluate the subject source and its application and determine all applicable requirements. IEPA is in possession of information, submitted to them by Region 5 and the Illinois attorney general's office that show a probability that MWG has undertaken modifications that triggered NSR. IEPA's statement in the response to comments that " *The potential NSR issues posed for a coal-fired power plant are complex and investigation of these issues is not amenable to resolution during permitting."* is both not a lawful interpretation of the regulations and a poor excuse in light of the fact that this facility should have received its operating permit eight years ago.

Thank you for your interest in this matter. I reiterate the public did not have a chance to properly review the permit or the response to comments and that we reserve the right to comment on the proposed permit during the regular comment period that regulations provide us with.

Verena Owen
Lake County Conservation Alliance

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December 16, 2005